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August 29, 2019

VIA ECF

The Honorable Gregory H. Woods, United States District Court Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *American E Group LLC v. Livewire Ergogenics, Inc.* No. 1-18-cv-03969 (GHW)

Dear Judge Woods:

We represent Defendant/Counter-Plaintiff/Third-Party Plaintiff Livewire Ergogenics, Inc. ("Livewire") in the above-captioned action. We are writing jointly with Jones Law Firm PC, counsel for Third Party Defendants JS Barkats ("JSB") and Sunny Barkats ("Barkats"), pursuant to the Court's Individual Rules of Practice, Rule 2.C.ii. Livewire, JSB and Barkats request a pre-motion conference in connection with Defendants' anticipated motion, pursuant to Fed.R.Civ.P. 37(a)(3)(A) and 37(a)(3)(B)(iii) and (iv), to compel: (i) JSB/Barkats to produce a copy of malpractice insurance policy(s) and (ii) JSB/Barkats to respond to Livewire's Document Requests and Interrogatories.

Counsel for Livewire and JSB/Barkats have corresponded in an attempt to resolve this dispute in accordance with Fed.R.Civ.P. 37(a)(1), including, emails between the undersigned and Attorney Paukman in early August 2019 and with Attorney Jones on August 26, 27 and 28, 2019.

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**JSB and Barkats Have Not Complied With Their
Rule 26 Disclosure Obligation To Produce Insurance Agreements**

On July 18, 2019, JSB and Barkats electronically filed their Rule 26 disclosures in violation of Court rules. DE 143. On July 24, 2019, the Court held a telephone conference concerning the violation; during the conference call, the Court addressed JSB/Barkats' representation that disclosure under Rule 26(a)(1)(A)(iv), which seeks the disclosure of insurance agreements, was "not applicable." DE 143, p. 2. The Court instructed JSB/Barkat's counsel to amend their Rule 26 disclosures to produce insurance agreements that could be applicable to Livewire's malpractice claim against JSB/Barkats.

On August 2, 2019, Livewire's counsel received JSB's amended initial disclosures, which disclosed that JSB's malpractice insurance expired in 2016. *See* Exhibit ("Ex.") A attached, email of Joseph Paukman that amends the Rule 26 disclosures. In response, Livewire's counsel requested a copy of the allegedly expired insurance policy because Livewire's malpractice claim concerned conduct that occurred in November 2015. Therefore, depending on the type of policy, it could cover the period JSB is alleged to have committed malpractice.

Despite numerous requests, JSB refuses to provide a copy of the insurance policy.

**JSB and Barkats Have Not Responded To
Livewire Document Request and Interrogatories**

On May 17, 2019, Livewire served its First Request for the Production of Documents (the "Document Request") on JSB and Barkats and First Set of Interrogatories on JSB (the "Interrogatories"). On June 11, 2019, Plaintiff's former counsel was permitted to withdraw and discovery was stayed until July 16, 2019. *See* DE 128 and 141. On July 16th, Livewire's counsel provided JSB and Barkats' counsel (Attorney Paukman) with copies of the Document Request and Interrogatories. To date, neither JSB nor Barkats have served responses to the Document Request or answers to the Interrogatories.

On August 8, 2019, JSB and Barkats' counsel (Attorney Paukman) forwarded Livewire's counsel a Dropbox link that might have contained responsive documents. However, when Livewire counsel's attempted to download the Dropbox files, serious data security concerns arose that prevented Livewire's counsel from downloading the files. Livewire's subsequent requests that the documents contained in the Dropbox be uploaded via a secure Citrix system were ignored.

On August 26th, Livewire's counsel again emailed JSB and Barkats new counsel, Bryce Jones of the Jones Law Firm PC, requesting responses to the various discovery requests. This request was refused.

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**JSB and Barkats' Response to Livewire's
Demand For Disclosure and Discovery Responses**

On August 27, 2019, JSB/Barkats set forth its position concerning Livewire's aforementioned requests for disclosure and discovery responses:

it is [JSB] and Sunny Barkats' position that any resolution of the dispute between them and Livewire must be addressed in arbitration. As there is currently a motion pending to that effect, it would be inappropriate to engage in further litigation. [sic] including discovery, in the instant case until the question of whether the court can hear this dispute is resolved.

JSB and Barkats have neither sought nor obtained leave of this Court to stay discovery in this proceeding. Livewire's position is that it is inappropriate for JSB and Barkats to unilaterally determine that their disclosure and discovery obligations should be stayed. Livewire seeks leave of Court to compel JSB and Barkats to comply with their Rule 26 disclosure obligations by providing a copy of all insurance policies that may be relevant to Livewire's malpractice claims and immediately respond to Livewire's Document Request (including, the production of responsive documents thereto) and answer the Interrogatories.

Respectfully submitted,



Ryan J. Whalen

Exhibit A

Ryan Whalen

From: JP Legal <3360066@gmail.com>
Sent: Friday, August 02, 2019 12:22 AM
To: Ryan Whalen
Subject: Fwd[3]: Initial disclosure please review
Attachments: INITIAL DISCLOSURES FRCP.docx

Hello

I am having trouble with my computer, enclosed is the initial disclosure with more information below

1) Sunny as to the retainer he signed with JSBarkats PLLC. Also

Manny the auditor,

Joseph Himmy,

Mary Sheridan,

Bill Hodson,

board of directors, of defendants

2) all the evidence is located in a drop box Possession of barkats

4) malpractice insurance expired in 2016,

Thank you

Joseph Paukman

Sent from Mail.ru app for iOS

----- Forwarded message -----

From: JP Legal <3360066@gmail.com>
To: JP Legal <3360066@gmail.com>
Date: Thursday, August 1, 2019, 4:00 PM -0400
Subject: Fwd[2]: Initial disclosure please review